

In the Supreme Court of the United States

OCTOBER TERM, 1947

No. 327

A. M. LANDMAN, SUPERINTENDENT OF THE FIVE
CIVILIZED TRIBES, FOR ESTATE OF PUNSKEE FIELD,
DECEASED CREEK, ROLL NO. 4564, PETITIONER

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT
OF CLAIMS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

On June 6, 1947, the Court of Claims entered judgment in this suit brought by the Superintendent of the Five Civilized Tribes to recover estate taxes paid on behalf of the estate of Punskee Field, a full-blood restricted Creek Indian, who died intestate on June 5, 1940. (R. 11, 18.) The judgment permitted the recovery of so much of the tax as was based upon the inclusion in the decedent's estate of the value of 160 acres of restricted, allotted land, including the oil and gas royalty interest therein, which had been designated, pursuant to Section 4 of the Act of May

(1)

10, 1928, c. 517, 45 Stat. 495, to remain exempt from taxation. The United States has filed a petition for a writ of certiorari (No. 325, present Term) to review that holding, asserting a conflict with *Landman (Estate of Burgess) v. Commissioner*, 123 F. 2d 787 (C. C. A. 10), certiorari denied, 315 U. S. 810.

The present petition for a writ of certiorari, filed by the Superintendent of the Five Civilized Tribes for the estate of Punskee Field, seeks a review of that portion of the decision of the Court of Claims which held that those assets owned by the decedent (bonds, real estate and cash) which had been acquired out of oil and gas royalties received prior to April 26, 1931, from the lease of decedent's 160 acres of restricted allotted land, were properly included in the decedent's gross estate for federal estate tax purposes. This issue was decided by the Court of Claims (R. 16-17) expressly upon the authority of this Court's decision in *Oklahoma Tax Comm'n v. United States*, 319 U. S. 598. In that case this Court considered the applicability to the property of restricted Indian members of the Five Civilized Tribes of death taxes levied by the State of Oklahoma. Each of the estates there involved contained restricted cash, securities, and surplus or purchased land acquired chiefly through conversion of oil and gas royalty income derived

from the designated, allotted lands of the decedent. Without regard to the dates of realization of the royalty income, or its conversion into cash, securities and surplus real estate, this Court concluded that nothing in any relevant statute prevented inclusion of the value of the items in a restricted Indian's gross estate for the purposes of Oklahoma's estate tax. Although, as our petition in No. 325 points out, we think that none of the exemption provisions relied upon in the *Oklahoma* case are applicable to federal death taxes, the holding of the Court in the *Oklahoma* case with respect to the taxability of the cash, securities, etc., would apply *a fortiori* here. It follows that no statutory or treaty provision prohibits the inclusion of similar items in the Indian's gross estate for federal estate tax purposes. Indeed, in the taxpayer's petition for certiorari, it is not contended that property which may be included in a restricted Indian's gross estate for state death tax purposes may not likewise be included in the Indian's gross estate for federal estate tax purposes, nor is it contended that the decision of this Court in the *Oklahoma Tax Comm'n* case did not require the conclusion reached by the Court of Claims. The taxpayer's petition, in effect, seeks a reexamination by this Court of matters concluded by the *Oklahoma Tax Comm'n* decision.

CONCLUSION

The decision of the court below on the question presented in the taxpayer's petition for certiorari is in accord with this Court's decision in *Oklahoma Tax Comm'n v. United States*. The petition for a writ of certiorari should, therefore, be denied.

Respectfully submitted.

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Solicitor General.

✓ THERON LAMAR CAUDLE,
Assistant Attorney General.

✓ HELEN R. CARLOSS,

✓ LEE A. JACKSON,

✓ JOHN W. HUSSEY,

Special Assistants to the Attorney General.
OCTOBER, 1947.

